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IN THE

# Supreme Court of the United States

OCTOBER TERM 1947

## No. 671

CARGILL, INCORPORATED,

*Petitioner,*

vs.

THE BOARD OF TRADE OF THE CITY OF CHICAGO, ET AL.,

*Respondents.*

## PETITION FOR REHEARING OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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vs.

THE BOARD OF TRADE OF THE CITY OF CHICAGO, ET AL.,

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**PETITION FOR REHEARING OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.**

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Now comes Cargill, Incorporated, Petitioner, by its attorneys, pursuant to Rule 33 of this Court, and prays for a rehearing of the order entered herein on April 26, 1948 denying its petition for a writ of certiorari.

In support thereof Petitioner respectfully submits the following substantial grounds available to Petitioner but not previously presented:

## I.

**The Decision of the Circuit Court of Appeals Dismissing the Amended Complaint and Depriving Petitioner of the Opportunity to Prove the Allegations Thereof is Contrary to the Decisions of This Court and of the Various Circuit Courts of Appeals, and Departs from the Established Practice under the Federal Rules of Civil Procedure.**

The petition for certiorari (p. 7) raised the question whether the Amended Complaint alleged an unreasonable restraint of trade in violation of the Sherman Act, even if Regulations 1894 and 1899 did not constitute "price-fixing". However, the petition did not point out that the Circuit Court of Appeals erred in failing to pass upon the sufficiency of the Amended Complaint in its entirety and in considering only the allegations specifically pleading the enactment of said Regulations.

The opinion below (R. 69, 72) is devoted only to a consideration of the question whether these Regulations were in themselves legal. The court overlooked entirely the sufficiency of the allegations of the amended complaint contained in paragraphs other than those dealing with the enactment of said Regulations. For example, paragraphs 15 and 16, which make no reference whatsoever to either of these Regulations, definitely state a claim entitling Petitioner to relief in alleging a combination and conspiracy in restraint of interstate trade and commerce in grain and grain futures in violation of the Sherman Act to control and fix the prices of certain grain futures contracts, to limit and restrict trading in grain, and to thereby protect from financial loss certain persons, partnerships and corporations who were on the "short" side of the market (R. 35). The enactment of the Regulations 1894 and 1899 is subsequently pleaded

in paragraphs 17 and 25 respectively merely as steps in the unlawful combination and conspiracy (R. 35, 39).

Under the Federal Rules of Civil Procedure[1] with respect to the statement of a claim for relief and the principles applicable to the construction of a complaint upon the filing of a motion to dismiss under Rule 12(b)(6), the motion should have been overruled without regard to the sufficiency of the allegations in paragraphs 17 and 25 concerning Regulations 1894 and 1899.

The only requirement imposed by Rule 8(a) of the Federal Rules of Civil Procedure is that the complaint should contain "a short and plain statement of the claim showing that the pleader is entitled to relief"; and in subsection (e) of the same rule it is provided that "each averment of a pleading shall be simple, concise and direct." Rule 8(f) further provides that "all pleadings shall be so construed as to do substantial justice."

It is uniformly held that where a motion to dismiss is interposed under Rule 12(b)(6), the complaint must be construed in the light most favorable to plaintiff and all allegations of fact contained therein are deemed to be admitted.[2]

It is also well established that a complaint should not be dismissed for insufficiency unless it appears to a certainty that plaintiff would not be entitled to relief under any state of facts which could be proved in support of the claim upon the trial

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[1] In *Continental Collieries Inc.* v. *Shober*, 130 F. 2d 631, 635 (C.C.A. 3, 1942) it is stated:

> "Under the Federal Rules of Civil Procedure the function of the complaint is to afford fair notice to the adversary of the nature and basis of the claim asserted and a general indication of the type of litigation involved [Citing authorities] * * *. Technicalities are no longer of their former importance, and a short statement which fairly gives notice of the nature of the claim is a sufficient compliance with the requirements of the rules."

[2] *Carroll* v. *Morrison Hotel Corporation*, 149 F. 2d 404, 406 (C.C.A. 7, 1945); *Galbreath* v. *Metropolitan Trust Co.*, 134 F. 2d 569, 572 (C.C.A. 10, 1943); *Cohen* v. *U.S.*, 129 F. 2d 733 (C.C.A. 8, 1942).

of the case.[3] As stated in *Carroll* v. *Morrison Hotel Corporation*, 149 F. 2d 404, 406 (C. C. A. 7, 1945):

> "No matter how likely it may seem that the pleader will be unable to prove his case, he is entitled, upon averring a claim, to an opportunity to try to prove it, * * *"

So here, Petitioner should have been allowed to introduce evidence in support of its allegations that an unreasonable restraint was imposed by Respondents, and the order of dismissal was clearly erroneous. *Polk Co.* v. *Glover*, 305 U. S. 5, 8, 9 (1938) *Borden's Co.* v. *Baldwin*, 283 U. S. 194, 208–9, 213 (1934).

In *Package Closure Corporation* v. *Seal Right Co.*, 141 F. 2d 972, 978 (C. C. A. 2, 1944), an anti-trust action for treble damages, the court stated:

> "We see no reason whatsoever to believe that the Supreme Court intended its liberal rules governing pleadings to be inapplicable to a suit for treble damages. See *C. E. Stevens Co.* v. *Foster & Kleiser*, 311 U. S. 255, 260."

To the same effect is *Louisiana Farmers' Protective Union* v. *Great Atlantic & Pacific Tea Company*, 131 F. 2d 419 (C. C. A. 8, 1942). In that case, the complaint alleged a combination and conspiracy to control prices and to destroy competition in interstate trade in strawberries. The court, in reversing a judgment dismissing the complaint without giving appellant leave to amend, stated:

> (422) "The courts have always recognized the difficulty in actions of the character here, inherent in the nature of the

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[3] *Fargo Glass & Paint Co.* v. *Globe American Corporation*, 161 F. 2d 811, 813 (C.C.A. 7, 1947); *Dennis* v. *Village of Tonka Bay*, 151 F. 2d 411, 412 (C.C.A. 8, 1945); *Continental Collieries Inc.* v. *Shober*, 130 F. 2d 631, 635 (C.C.A. 3, 1942); *Dioguardi* v. *Durning*, 139 F. 2d 774, 775 (C.C.A. 2, 1944); *Kohler* v. *Jacobs*, 138 F. 2d 440, 441 (C.C.A. 5, 1943); *Tahir Erk* v. *Glenn L. Martin Co.*, 116 F. 2d 865 (C.C.A. 4, 1941); *Leimer* v. *State Mutual Life Assurance Co.*, 108 F. 2d 302, 306 (C.C.A. 8, 1940); *Sparks* v. *England*, 113 F. 2d 579, 581 (C.C.A. 8, 1940); *Cohen* v. *U.S.*, 129 F. 2d 733, 736 (C.C.A. 8, 1942); *Garbutt* v. *Blanding Mines Co.*, 141 F. 2d 679 (C.C.A. 10, 1944); *U.S.* v. *Ass'n. of American Railroads*, 4 F.R.D. 510, 519 (D.C. Neb. 1945).

case, in setting forth in precise detail the acts constituting the alleged violations of the anti-trust laws. * * * (Citing cases) And since the adoption of the Rules of Civil Procedure, the cases require of the pleader only a plain and simple statement of his case in conformity to Rule 8(a), 28 U. S. C. A. following section 723c. It is not necessary to set out in detail the acts complained of nor the circumstances from which the pleader draws his conclusions that violations of the acts of Congress have occurred and the pleader has been damaged. *C. E. Stevens Co.* v. *Foster & Kleiser Co.*, 311 U. S. 255."

In the *Stevens* case this Court said (311 U. S. 255, 261 [1940]):

"The conspiracy, with its effect on interstate commerce, is alleged to have caused the petitioner great expense and loss of profits; to have restrained and prevented * * * 'all to the great injury and damage of the plaintiff.' * * * While these allegations are general, we cannot say that they are inadequate * * *"[4]

Thus, the court below erred in failing to consider the Amended Complaint in its entirety as sufficiently stating a claim under the anti-trust laws.

The Circuit Court of Appeals further erred in ignoring the fact that Regulations 1894 and 1899 were pleaded as part of the plan to carry out the unlawful conspiracy, and in holding that merely because such Regulations were, in themselves,

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[4]For many other decisions applying liberal rules of pleading in civil anti-trust actions, and supporting the sufficiency of the complaint here, see: *Mitchell Woodbury Corporation* v. *Albert Pick Barth Co.*, 41 F. 2d 148 (C.C.A. 1, 1930); *Hicks* v. *Bekins Moving & Storage Co.*, 87 F. 2d 583, 585 (C.C A. 9, 1937); *Ballard Oil Terminal Corporation* v. *Mexican Petroleum Corporation*, 28 F. 2d 91 (C.C.A. 1, 1928); *Makan Amusement Corporation* v. *Trenton-New Brunswick Theatres Co.*, 3 F.R. D. 429 (D.C.N.J. 1944); *U. S.* v. *Johns-Manville*, 67 F. Supp. 291, 293 (D. C. Ill. 1941); *Stewart Warner Corporation* v. *Staley*, 42 F. Supp. 140, 145 (D.C. Pa. 1941); *Wm. F. Luebke Co.* v. *Manhardt*, 37 F. Supp. 13, 14 (D.C. Wis. 1941); *U.S.* v. *Standard Oil Company of California*, 7 F.R.D. 338, 340 (D.C. Cal. 1947); *Rivoli Operating Corporation* v. *Loew's Inc.*, 7 F.R.D. 219, 222 (D.C. N.Y. 1947); *Camrel Co. Inc.* v. *Skouras Theatres Corporation*, 8 Fed. Rules Serv. 8a 25, Case 4 (D.C. N.J. 1944).

lawful, the action should be dismissed. Such conclusion is directly contrary to the many decisions of this Court holding that although the means employed in an unlawful conspiracy may in themselves be lawful, yet they nevertheless become unlawful when they are, as here, but one of the steps in an unlawful plot. *American Tobacco Co.* vs. *United States* 328 U.S. 781, 809 (1946) affirming 147 F. 2d 93, 106, 107 (C.C.A. 6, 1944); *Aikens* v. *Wisconsin*, 195 U.S. 194, 206 (1904); *U.S.* v. *Reading Co.*, 226 U.S. 324, 357 (1912); *Swift & Company* v. *U.S.* 196 U.S. 376, 398 (1905).

As stated in *U.S.* v. *Patten*, 226 U.S. 525, 544 (1913):

> "* * * It hardly needs statement that the character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. *Montague & Co.* v. *Lowry*, 193 U.S. 38, 45–46; *Swift & Co.* v *United States*, 196 U.S. 375, 386–387."

See also, *Lynch* v. *Magnavox Co.*, 94 F. 2d 883, 891 (C.C.A. 9, 1938).

Accordingly, the Amended Complaint, when viewed in its entirety, was clearly adequate under the Federal Rules of Civil Procedure to require Respondents to answer and to put them on trial. As stated by Mr. Justice Brandeis in *Myers* v. *Bethlehem Ship Building Corporation*, 303 U.S. 41, 51, 52 (1938):

> "Lawsuits also often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact."

Petitioner has been denied the opportunity of proving the clear and positive allegations of its Amended Complaint, and has not had its day in court. We submit that this grave error should be rectified by this Court.

## II.

### The Far Reaching Consequences of the Decision Below upon the Economy of the Nation Necessitate the Determination by This Court of the Vital Questions in Issue.

In considering the public importance of the questions involved, attention is called to the fact that while Respondent Board of Trade is the world's largest grain futures market there are 17 other contract markets under the jurisdiction of the Commodity Exchange Authority in which futures trading is conducted in various commodities (U.S. Department of Agriculture, Report of the Administrator of the Commodity Exchange Authority (1947), p. 7), and also a number of other commodity exchanges not designated as contract markets.[5] Some of these organizations already have rules and regulations comparable to those of Respondent Board. For the convenience of the court there are collected in the Appendix pertinent excerpts from the rules and regulations of various commodity exchanges and the New York and Chicago Stock Exchanges.

Although admonitions have been frequently made that a denial of a petition for certiorari is not to be considered as an affirmance by this Court in any way of the judgment entered below, it is fair to assume that the decision of the Circuit Court of Appeals, if allowed to stand, will be widely relied upon and followed in many instances. Respondent Board has on prior occasions taken similar action to that complained of here (R. 22), and if the stamp of judicial approval on such conduct remains, it will undoubtedly set the pattern for like action in the future on Respondent Board and on other Exchanges

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[5]Among the "non-contract" markets is the defendant in *U. S.* vs. *New York Coffee & Sugar Exchange*, 263 U.S. 611 (1924) cited by Respondents in their Brief in Opposition, p. 17. In that case, the management of the Exchange was not involved in any unlawful combination and the Court in no way considered or passed upon the legality of action such as is complained of here.

which now have rules comparable to those of Respondent Board or which may subsequently adopt similar rules. Surely this Court does not wish to countenance action condemned in the following manner by a federal agency in the Federal Trade Commission Report entitled: "Economic Effects of Grain Exchange Actions, Affecting Futures Trading During the First Six Months of 1946" (Feb. 4, 1947):[6]

> "Events of the first six months of 1946 demonstrate from a new background of practical experience that failure of exchange managements to protect the validity of future contracts results in severe loss of public confidence. Loss of confidence was due primarily to pursuit by exchange managements of a vacillating policy which failed to insist that traders perform in accordance with the terms of contracts traded. *In this, the Chicago Board, having least effectively steered a straight course in accordance with the fundamental principles of validity of contracts and responsibility of traders, bears the heaviest burden of public criticism.*"[7] (Italics ours)

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We submit that, in the public interest, it is imperative that this Court resolve the questions involved in such a way as will put an end to unlawful restraints such as those charged here. Otherwise the power of irresponsible private groups to control and regulate vital phases of interstate commerce will be asserted again whenever the selfish interests of Exchange managements shall be served thereby, and the breach in the protective wall of the anti-trust laws arising from the immunity now judicially bestowed upon Exchanges without Congressional sanction, will thus invite further impairment of the sanctity of contracts to the detriment of the public generally.

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[6] A copy of this Report has been lodged with the Clerk of this Court.

[7] See also, Hearings Before the House Committee on Agriculture 80th Cong., 1st Sess., "Long-Range Agricultural Policy" (Part 4) (1947), pp. 578, 581, 582.

It is therefore respectfully urged, upon the grounds aforesaid, that this petition for rehearing be granted; that the order denying the petition for writ of certiorari be set aside; and that, upon reconsideration by the Court, the petition for writ of certiorari be granted.

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## CERTIFICATE

Leo F. Tierney, one of the attorneys for Petitioner herein, hereby certifies that this Petition is presented in good faith and not for delay, and that it is restricted to substantial grounds not presented in the Petition for Certiorari.

LEO F. TIERNEY

# APPENDIX:

## Excerpts from Rules and Regulations of Various Exchanges

## I. COMMODITY EXCHANGES[1]

### The Board of Trade of Kansas City, Mo.*

(Wheat, corn, oats, grain sorghums, bran, and shorts)

Rule 37: "Powers.—In addition to all other powers specifically vested in the Board of Directors by this Constitution, the Board of Directors shall have power: . . . (f) To establish the time and place of trading among members of this Association and the manner in which said trading shall be conducted, and provide regulations therefor. Members guilty of irregular trading may be fined, suspended, or expelled from this Association at the discretion of said Board of Directors. . . ."

Rule 38: "War Powers.—The Board of Directors, during the continuance of any war to which the United States shall be a party, shall have power from time to time thereafter to prohibit, until further action of the Board and notice thereof, trading for present or future delivery in any or all of the commodities traded in on its Exchange, or such trading for delivery in any particular month, including trading in settlement of any then existing future contracts.

"Whenever such trading for future delivery shall have been so prohibited, the Board of Directors shall appoint a committee of three from the membership at large, which committee shall fix, as of the day immediately preceding the first day on which said future trading shall have been prohibited, a fair and rea-

[1]Exchanges which are designated as contract markets under the Commodity Exchange Act (7 USC §5) are shown with an asterisk. The rules of such Exchanges were taken from copies on file with the Commodity Exchange Authority on Sept. 12, 1947.

sonable price at which existing contracts shall be settled; and the price so established shall, without the payment of any penalty, be the basis on which settlements of such contracts for future delivery shall be made.

"Subject to the provisions of the Commodity Exchange Act, as amended, the Board of Directors, whenever the public welfare, or the best interests of the Association shall in its judgment seem to require, shall have power to suspend, during the continuance of any war to which the United States shall be a party, the operation of any rule of the Exchange, and also to fix a maximum price for any commodity dealt in on its Exchange, above which price no member shall thereafter and during the maintenance of said maximum price be permitted to make a trade in such commodity.

"Any action of the board of Directors under this rule shall be binding on all members of the Association, from and after the hour when the same shall be posted on the bulletin board in the Exchange room.

"Any member making a trade, or refusing to make a settlement, or doing any act in violation of this rule, shall be deemed to have been guilty of a grave offense involving the good name of this Association, and shall be liable to punishment as provided in Rule 152."

**Minneapolis Grain Exchange*** (Wheat, oats, and rye)

Section 418 of the general rules: "Powers of the Board of Directors to regulate trading, close the Exchange, etc.—The Board of Directors shall have the power from time to time to fix the hours of trading and to declare any day to be a holiday.

"When in the opinion of the Board of Directors an emergency exists, the Board shall have the power from time to time to:

a. Close the Exchange;

b. Suspend trading in any or all Futures Contracts, including trading in settlement of any then existing Futures Contracts;

c. Prohibit trading during any day in any or all Futures Contracts at prices more than a specified limit above or below the average closing prices of the preceding business day;

d. Prohibit trading in any or all Futures Contracts at prices above or below such limits as are specified by the Board;

e. Limit the total amount of open speculative Futures trades which any Member or any Registered Firm or Corporation, or which any customer of any such Member, Firm, or Corporation may have at any one time in any or all commodities, and to increase or decrease or cancel such limitations as the Board of Directors deems advisable. The Board of Directors may require such reports and may make such Regulations as it deems necessary to enforce such limitations;

Provided, However, that the establishing of any such limit shall not be deemed to require that total amounts of such trades acquired before the effective date of such limitations be reduced to such limit;

f. Adopt Regulations to conform with orders, recommendations or requests from any duly constituted governmental authority, or which in the opinion of the Board of Directors are necessary and appropriate."

**Milwaukee Grain Exchange*** (Wheat, corn, and oats)

General rule 4: "During such period as the United States shall be at war with any foreign country, the Board of Directors shall have power to prohibit the making of contracts for the present or future delivery of property traded in on the Ex-

change, and to limit or restrict such trading in such manner as the public welfare and the best interests of the Association may demand, either by the imposition of a maximum price above which no member shall make a contract, or otherwise.

"In the event that trading for future delivery shall have been so prohibited the Board of Directors shall appoint a committee, consisting of three members of the Association, whose duties shall be the determination of a fair and equitable price at which existing contracts shall be settled and such price shall be the basis upon which settlements of such contracts for future delivery shall be made.

"A violation of the provisions of this section shall be deemed a grave offense against the good name of the Association and shall render the member guilty of such violation liable to the penalties imposed by Section 11 of Rule 4."

**Merchants' Exchange of St. Louis***
(Bran, shorts, middlings)

Provision 365 of rules: "Whenever the Board of Directors shall find and declare that there is an artificial congestion, condition, corner, scarcity, unwieldly surplus, a financial situation, emergency, war, or disturbance, that tends to make trading in a commodity or any commodities on the Exchange either for cash, deferred shipment, to arrive, or future delivery, abnormally hazardous or unsafe to the members or the public, or affects the good name of the Exchange, the Board, by an affirmative resolution of two-thirds of the Board members present and six members shall be required for a quorum for such purpose, may adopt and enforce one or more of the following regulations:

(a) That trading between members be confined to the closing out of existing contracts and that there shall not be

any further trading in any month on any commodity or commodities for a definite period or until further notice.

(b) That there shall be no trading, during any specific day or period, in any commodity or commodities, at prices more than a definite amount or per cent above or below the previous day's closing price.

(c) Cease trading in any commodity or commodities for a definite time or until further notice.

(d) Establish for a definite period or until further notice, a contract value on any commodity or commodities in any month, on which all open contracts between members shall be cashed, liquidated or closed.

(e) Limit the total amount of contracts in any commodity or commodities which may be open at any one time or during any period, also the amount which may be open for any one member or non-member or firm or corporation at any one time.

"Any of which regulations may be rescinded at any time by two-thirds' affirmative vote of the Board members present, six members being required for a quorum for this purpose."

**Duluth Board of Trade*** (Wheat)

Rule XV, section 2: "The Board of Directors during the continuance of any war to which the United States shall be a party, shall have the power from time to time to thereafter prohibit, until further action of the Board and notice thereof, trading for present or future delivery in any or all of the commodities traded in on its exchange, or such trading for delivery in any particular month, including trading in settlement of any then existing future contracts. Whenever such trading for future delivery shall have been so prohibited, the Board of Directors shall appoint a committee of three from the membership at large, which committee shall fix, as of the day immediately pre-

ceding the first day on which said future trading shall have been prohibited, a fair and reasonable price at which existing contracts shall be settled and the price so established shall, without the payment of any penalty, be the basis on which such settlement of such contracts for future delivery shall be made. The Board of Directors, whenever the public welfare or the best interests of the Association in its judgment seem to require, shall have power to suspend, during the continuance of any war to which the United States shall be a party, the operation of any rule of the Exchange, and also to fix a maximum price for any commodity dealt in on its Exchange above which price no member shall thereafter and during the maintenance of said maximum price, be permitted to make a trade in such commodity. Any action of the Board of Directors under this section shall be binding on all members of the Association, from and after the hour when the same shall be posted on the bulletin board in the Exchange room. It shall be the duty of the Board of Directors to investigate any complaint of a violation of this rule, and if the member accused shall be found guilty, he may be censured or fined, suspended or expelled, after charges made and a hearing and determination thereon by the Board of Directors in the manner prescribed in Section 12 of Rule IV."

**New York Cotton Exchange***

Bylaws, section 1.38. "(d) If the Board of Managers in a meeting declares by a majority vote of the entire Board that an emergency situation exists that makes certain designated open contracts on the New York Cotton Exchange impossible of fulfillment or that the fulfillment thereof may be prejudicial to the public interest or the equitable principles of trade or the welfare of said Exchange, said Board in said meeting or any adjournment or adjournments thereof may by a majority vote of the whole Board, accord relief in the manner and time as in its judgment such situation requires.

"(2) Without in any way limiting the authority herein conferred upon the Board of Managers, the intention hereof is that in a situation provided for in the foregoing paragraph, said Board in meeting may by a majority vote of the whole Board, require the liquidation of such contracts that it may designate, in the manner and time and at such settlement price or prices as it may determine, with due regard for the rights of all interested parties. The measures that the Board may invoke hereunder in such situation may be modified or revoked in whole or in part by a majority vote of the whole Board in meeting assembled.

"(3) Any member failing to conform to such regulations or measures, thus adopted, may be suspended from all rights of membership for a term not to exceed one year, or may be expelled from membership in the Exchange, by the Board of Managers."

Bylaws, section 8.08. "(1) The Board of Managers, or in the absence of a quorum thereof, the Executive Committee, may in the discretion of either, without previous notice, close the Exchange on such days, or portions of days, as will in the judgment of either serve to promote the best interests of the Exchange.

"(2) During such periods as the market may remain closed in accordance with action by the Board, or by the Executive Committee under the paragraph immediately preceding, all matters relating to notices, deliveries, margin calls, clearing house settlements, or other Exchange or Contract requirements shall remain in status quo without prejudice thereby to any interest concerned and the subsequent rulings of the Board with respect thereto shall be binding on all parties in interest, anything in these By-Laws to the contrary notwithstanding."

**Chicago Mercantile Exchange*** (Butter, eggs, potatoes)

Rule 943. "Emergency Termination of Trading.—When, in the opinion of the Business Manager the volume of trading

indicates that the purchases and sales are in excess of the visible supply of a particular commodity, and/or an emergency exists, and the Clearing House Committee concurs, the Manager may order one or more of the following limitations on trading:

"(a) That trading be confined in any specified commodity between those already committed and that such trading be limited to the closing out of their open contracts.

"(b) That there shall be no trading during any particular day in any specified commodity at prices more than a certain amount to be fixed by the Clearing House Committee, above or below the settling price of the preceding day.

"When, in the opinion of the Business Manager, an emergency exists and the Clearing House Committee cannot be called into session promptly enough to meet the emergency, the Business Manager, with the consent of either the President or the Chairman of the Clearing House Committee, may exercise the authority vested by this rule in the Clearing House Committee.

"The Board itself may exercise any of the discretion, authority, and power which by this Rule is vested in the Clearing House Committee and other representatives of the Exchange. The Board may also, when it deems that an emergency exists, stop trading in any future contracts and, notwithstanding any other Exchange rules, determine the manner in which deliveries shall be made or fix a settlement price at which all such contracts shall be closed out.

"All Exchange contracts shall be subject to this rule and shall be modified to the extent necessary to comply with the action taken under it."

**New York Mercantile Exchange***
(Butter, eggs and potatoes)

Clearing House rule 39-A: "If during a national emergency, such as war, famine, etc., the Executive Committee feels that it would be to the national interest to stop future trading, it may do so by a two-thirds majority affirmative vote of the entire committee, by specifying a date of closing and fixing settling prices for all open contracts."

**Wool Associates of the New York Cotton Exchange, Inc.***
(Wool tops)

Delivery rule 12A: "Whenever through any exceptional contingency not provided for in the By-Laws and Rules, deliveries are not possible, and an extraordinary situation arises wherein a rigid enforcement of contracts generally would be grossly at variance with just and equitable principles of trade or the public interest, then upon application of any member, and after investigation, the Board of Governors, by a two-thirds vote of the whole Board, may accord relief in such manner as in their judgment the emergency may demand, with due regard, however, to upholding the rights of both buyer and seller and the fulfillment of their just obligations and to the best interests of the Exchange."

**Memphis Merchants Exchange Clearing Association***
(Cottonseed and soybean meal)

Bylaws, article II, section 6: "Without prejudice to the general powers conferred, it is expressly declared that the Board shall have the following powers, to-wit: . . . (d) To declare that an emergency exists and may change the published limits or daily price fluctuations, place a minimum or maximum limit on prices or suspend trading altogether, EXCEPT that transactions for the current month shall be cleared in the customary manner during the last three trading days of that month. . . ."

**New Orleans Cotton Exchange***

Rule 34, Section 3: "No day, except a legal holiday, can be declared a holiday, and the transaction of business in futures be suspended, unless five business days' official notice shall have been given; provided, that the Board of Directors may, by two-thirds majority of its members present and voting, have the power in their discretion, without previous notice, to close the Exchange on such days or portions of days as will, in their judgment serve to promote the best interest of the Exchange."

**New York Produce Exchange*** (Cottonseed and soybean oil)

Bylaws, Section 67-A: "The Board of Managers shall have full power and authority at any time and from time to time, by resolution adopted by a majority of the whole Board, to make, determine, fix, alter, vary and change the rules regulating purchases and sales of, and general trading in, any commodity futures dealt in on the floor of the Exchange, including, without limiting the generality of the foregoing, the power and authority to require the furnishing of information by the members and to make investigations of all transactions in commodity futures and to subpoena records and to alter or abolish credits which may be given, and to increase or decrease margin requirements in futures transactions and to prohibit futures transactions in any commodity, anything contained in the rules and regulations governing transactions in any commodity futures on the floor of the Exchange, as now existing or as hereafter changed or amended, to the contrary notwithstanding."

**New York Coffee and Sugar Exchange, Inc.**

Bylaws, Section 110: "Whenever through any exceptional contingency not provided for in the By-Laws and Rules a situation of such extreme urgency arises that a rigid enforcement of contracts generally would be grossly at variance with just and equitable principles of trade, the Board of Managers, by a two-

thirds vote of the whole Board, may accord relief in such manner as in their judgment the exigencies of the emergency demand, with due regard, however, to upholding the just rights of both buyer and seller in their obligation to fulfill their contract and to serving the best interests of the Exchange.

"Such regulations or measures shall become effective at such times as the Board may determine, and remain effective until abrogated by a two-thirds vote of the entire Board."

**New York Cocoa Exchange, Inc.**

Chapter I, By-Laws, Powers of the Board of Managers:

Section 3A, p. 1–2:

"Whenever as the result of an act of any government, or any political sub-division of any government, or of a general financial panic, riot, war, rebellion, pestilence, plague, calamity or any other exceptional contingency not provided for in the By-Laws and Rules, an exceptional situation of such extreme urgency arises that the rigid enforcement of contracts would be grossly at variance with just and equitable principles of trade, the Board of Managers by a two-thirds vote of the whole Board may accord relief in such manner as in its judgment the exigencies of the emergency demand, and in connection therewith may suspend, abrogate or modify any provisions of the By-Laws and Rules, or the operation and obligations thereof, with due regard, however, to upholding the rights of both buyer and seller and the fulfillment of their just obligations and to serving the best interest of the Exchange.

"In the event that any members of the Board of Managers shall be unable by reason of absence from the City or illness, to attend the meeting of the Board at which any such action is taken or considered, a two-thirds vote of those members of the Board who are not so prevented from attending, shall be sufficient for the adoption of any resolution under this section.

"Under the conditions hereinabove set forth and for the purpose of making effective the provisions of this section a majority of the members of the Board of Managers, present at any meeting called informally and without formal notice for the purpose, shall have authority either to postpone the opening Call of the Exchange or to suspend trading on the Exchange for thirty-minute intervals until such time as the Board of Managers can be convened."

Chapter 9, p. 80, By-Laws, Amendment and Interpretation of By-Laws and Rules

Procedure for Addition or Amendment to By-Laws—Section 165:

"A proposed addition or amendment to the By-Laws shall be submitted at a meeting of the Board of Managers, and a copy of said proposed addition or amendment shall then be sent to each member of such Board. At a subsequent meeting of the Board of Managers, such proposed addition or amendment may be approved by a two-thirds vote of the members of the Board present and voting at said meeting. After approval by the Board of Managers, the proposed addition or amendment to the By-Laws shall be submitted to a vote of the members of the Exchange at a meeting called for that purpose, of which meeting ten days' notice, stating specifically the addition or amendment proposed, shall have been served, delivered or mailed in the manner prescribed in Section 69 for the calling of special meetings. The addition or amendment may be adopted by the affirmative vote of a majority of the members, voting by ballot, present at said meeting.

"Any alteration of the By-Laws relating to contracts made under the provisions of this Section shall be binding on all contracts entered into before as well as after its adoption, provided such alteration does not affect the amount of money to be paid or received or the quality of the merchandise to be received or delivered under such contract."

**Commodity Exchange, Inc. (New York)**
**(Silk, rubber, and metals)**

Section 137, Government By-Laws, Emergency Relief Powers:

"In the event of an emergency by reason whereof the ordinary media of exchange and payments are not available for exchange transactions, the Board may by a two-thirds vote of the entire Board adopt such regulations or measures as may in its opinion meet the emergency, and in connection therewith may abrogate or modify any provision of the By-Laws or the operation or application thereof relating to the subject, and may provide for such means and methods of payment as may be adopted by trade or authorized by law; with due regard, however, to upholding the rights of both buyer and seller and the fulfillment of their just obligations and to the best interests of the Exchange. Such regulations or measures shall become effective at such time as the Board may determine, and remain effective until abrogated by a two-thirds vote of the entire Board."

Section 408, General Trading By-Laws:

"Holidays and Suspension of Trading (amended Jan. 26, 1940)

"The Board of Governors may, in its discretion, without previous notice upon such notice as it may prescribe,—(a) close the Exchange for trading or for all business,—(b) suspend trading in any commodity, or in a contract for any commodity,—(c) suspend trading for any delivery month or months for any commodity; on such day or days, or portion of day or days, or for such period of time, as may, in its judgment, serve to promote the best interests of the Exchange or of the public. Any action under the foregoing provisions shall be binding on all members."

"The exchange shall be closed for all business on such

days as are observed as legal holidays in the State of New York."

Section 409: "Market Equilibrium (Adopted October 11, 1935)

"Whenever it shall appear that an interest has been created, or a situation exists in respect to any delivery month or months which endangers, or may endanger the normal functioning of the Exchange or of the market, or that conditions have arisen that jeopardize the maintenance of a free open and orderly market, or that jeopardize the fulfillment of outstanding contracts or that threaten to conflict with the best interests of the Exchange or of the public, whether such interest or such conditions may involve a violation of the By-Laws or Rules of the Exchange or not, the Board of Governors, by a vote of two-thirds of those present and voting, but in no event by less than twelve affirmative votes, may itself or through any regular or special committee appointed by the Board, investigate the situation or interest; and for the purposes of such investigation the Board, or such regular or special committee, shall have all of the powers and authority vested by the By-Laws in the Committee on Business Conduct. If the Board shall conclude that such an interest, situation or condition exists, or that the best interests of the Exchange or of the public are or may be threatened, it shall have the power and authority, after affording an opportunity for the interested members to be heard, to require the member or members involved therein to take such steps as the Board may deem necessary to avert, regulate or correct the conditions in question, and for that purpose may require such member, or members, to liquidate in whole, or in part, their position or positions within such time and upon such terms as may be fixed by the Board, or to take such other steps as may be deemed necessary or desirable in the discretion of the Board. In the event a member fails to comply promptly with such requirements as the Board may prescribe, he shall be subject to censure, fine, suspension or expulsion under Section 210 of the By-Laws."

## II. STOCK EXCHANGES

### New York Stock Exchange

Article III—Section 8: "Constitution—Board of Governors:

"Whenever in the opinion of the Board of Governors a corner has been created in a security admitted to dealings on the Exchange or a single interest or group has acquired such control of a security so admitted that the same cannot be obtained for delivery on existing contracts except at prices and on terms arbitrarily dictated by such interest or group, the Board may postpone the time for deliveries on Exchange contracts therein, and may from time to time further postpone such time or may postpone deliveries until further action by the Board, and may at any time by resolution declare that if such security is not delivered on any contract calling for delivery thereof at or before the time to which delivery has been postponed or which has been fixed by the Board for such delivery, such contract shall be settled by the payment to the party entitled to receive such security or by the credit to such party of a fair settlement price as agreed by the parties to the contract, or if the parties to any contract which is to be settled on the basis of such fair settlement price do not agree with respect thereto, such fair settlement price and date for the payment of same may be fixed by the Board. The Board before fixing the same shall give the parties to the contract which is to be settled on the basis thereof an opportunity to be heard either before the Board or before a committee authorized for the purpose. Any such committee shall report the testimony together with its conclusions thereon to the Board which may act upon such report without further hearing or may accord the parties a further hearing before acting thereon."

### Chicago Stock Exchange

Constitution, Article 4, Sec. 1: "In the exercise of its powers, it (Board of Governors) may adopt such rules, issue such orders and directions, and make such decisions

as it may deem appropriate. It may delegate any of its powers to any standing or special committee. Whenever it shall appear to the board of Governors that an *emergency* exists, it may delegate all of its powers, for such a period as it may determine, to a special committee, a majority of which shall be members of the exchange . . . "

Article 4, Sec. 10: "Whenever in its opinion such action is called for by the public interest or by just and equitable principles of trade, the Board of Governors may suspend all trading on the exchange, or may extend or postpone the time for the performance of Exchange contracts, or, prior to performance may cancel the same, or may determine the terms upon which any Exchange contract or contracts shall be settled, and in case it finds that a free and open market in the purchase or sale of any security does not exist upon the exchange, it may, in addition to the powers hereinbefore granted, temporarily suspend trading in any such security."